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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIFTH APPELLATE DISTRICT**

In re KAYLA M., A Person Coming Under  
The Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

KAYLA M.,

Defendant and Appellant.

F044543

(Super. Ct. No. JW100274-00)

**OPINION**

**THE COURT\***

APPEAL from a judgment of the Superior Court of Kern County. Charles B. Pfister, Judge.

Waldemar D. Halka, under appointment by the Court of Appeal, for Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney General, Jo Graves, Assistant Attorney General, Carlos A. Martinez and Stephen G. Herndon, Deputy Attorneys General, for Plaintiff and Respondent.

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\* Before Dibiaso, Acting P.J., Wiseman, J., and Cornell, J.

In May 2003,<sup>1</sup> appellant Kayla M., a minor, admitted an allegation contained in a juvenile wardship petition that she committed petty theft (Pen. Code, § 488), a misdemeanor. Following the disposition hearing on May 31, the court, pursuant to Welfare and Institutions Code section 725,<sup>2</sup> placed appellant on probation for a period not to exceed six months, with various terms and conditions, but did not adjudge her a ward of the court. In November, the probation officer reported that appellant failed to comply with the terms and conditions for probation and the court revoked appellant's probation. In December, following a disposition hearing, the court adjudged appellant a ward of the court; placed her on probation for a period not to exceed her twenty-first birthday; ordered her removed from the custody of her parents; and ordered her placed in juvenile hall pending placement.

On appeal, appellant's sole contention is that the court erred in ordering her removed from the custody of her parents. We will affirm.

### **FACTUAL AND PROCEDURAL BACKGROUND**

The report of the probation officer prepared in connection with the May disposition hearing indicates that police reports reveal the following concerning the underlying offense. An employee of a Rite-Aid drug store in Bakersfield observed appellant and a companion "walking through the store holding" an envelope containing "newly developed" photographs. The two girls then entered the restroom and when they came back out "they were no longer in possession of the film." The employee approached the girls and asked about the envelope of photographs. Appellant responded that it was in her backpack and that she intended to pay for it. She then removed the envelope from her backpack, at which point her companion ran out of the store. Appellant then "threw down the photographs" and, when the employee stated she was

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<sup>1</sup> Further references to dates of events are to dates in 2003.

<sup>2</sup> All further statutory references are to the Welfare and Institutions Code.

going to call the police, pushed the employee out of the way and fled. The employee went into the restroom where she found an empty carton from a package of two disposable Kodak cameras. The employee noticed a photograph of appellant among the photographs appellant dropped. She gave this photograph to the investigating police officer, and several days later the officer saw appellant walking “in the downtown area.” She had a backpack in her possession. The officer made contact with appellant and took her into custody. A subsequent search of appellant’s backpack revealed two disposable Kodak cameras.

As indicated above, in May 2003 appellant was placed on six months’ probation. She was 14 years old at the time. The terms of probation included that appellant was to complete 64 hours in the Juvenile Court Work Program by August 3; pay a \$100 restitution fine by November 14; and report to her probation officer as directed. On June 30, the probation officer reviewed with appellant and her father the terms and conditions of probation and instructed appellant to report by telephone to the officer on the first and fifteenth days of each month.

The report of the probation officer prepared in connection with the most recent disposition hearing (December RPO), dated December 4, states appellant had not reported to the probation officer since August 5; she “was failed from the Juvenile Court Work Program for having completed only 33 out of 64 hours ordered”; and she had “failed to make any payments” on her restitution fine. Appellant’s father told the probation officer he “tells his daughter to follow her terms and conditions, but she does not.” Appellant told the probation officer that she did not complete the work program “as she was pregnant at the time,” and that she did not inform the probation officer of “her situation” because “she lost the [probation officer’s] phone number.” She admitted “using marijuana and alcohol ‘once in a while.’ ”

The December RPO further states the following. “The minor’s mother is currently transient, listing no stable residence.” “The minor’s father has not been able to secure an

adequate residence for the minor for quite some time. The minor, her father and [appellant's two younger] siblings have moved from one relative or friend's home to another within the last year." At the time of the preparation of the December RPO, appellant was living with her father, two siblings and grandmother in a one-bedroom apartment. Appellant's father explained "he had not been able to secure a home or apartment because he had been out of work for approximately eight months." The father's source of income was public assistance benefits under the Aid to Families With Dependent Children program.

At the disposition hearing, he testified "we're staying at a motel right now with two beds."

In ordering appellant removed from the custody of her parents, the court found, "[c]ontinuation in the home of the parents, guardian will be contrary to the minor's welfare," and "[t]he minor has been tried on probation in the custody of her father and has failed to reform."

### **DISCUSSION**

Appellant contends the court abused its discretion in removing appellant from her father's custody. We disagree.

"[T]he type of disposition made by the juvenile court is within the sound discretion of that court. In reviewing a juvenile court's disposition . . . the appellate court must indulge in all reasonable inferences from the evidence and the record to support the action of the juvenile court. [Citations.] An order of disposition, made by the juvenile court, may be reversed by the appellate court only upon a showing of an abuse of discretion." (*In re Darryl T.* (1978) 81 Cal.App.3d 874, 877; accord, *In re Richard C.* (1991) 231 Cal.App.3d 1487, 1501 [" '[i]f there is any substantial evidence to support the findings of a juvenile court, a reviewing court is without power to weigh or evaluate the findings.' "].)

Section 726 provides that in order to remove a child from the custody of a parent, the court must “find[] one of the following facts: [¶] (1) That the parent or guardian is incapable of providing or has failed or neglected to provide proper maintenance, training, and education for the minor. [¶] (2) That the minor has been tried on probation while in custody and has failed to reform. [¶] (3) That the welfare of the minor requires that custody be taken from the minor’s parent or guardian.” (§ 726, subd. (a).)

Here, the juvenile court made the findings set forth in subdivisions (a)(2) and (a)(3) of section 726. With respect to the court’s finding that appellant has been tried on probation while in the custody of her father and has failed to reform, we recognize, as appellant points out, that “[t]he material fact is not that the minor may, on some one occasion, have deviated from the paths of rectitude, but that such deviation exemplifies such a complete failure by the parents to achieve rehabilitation as to compel the conclusion that further efforts by them will be unavailing.” (*In re Donna G.* (1970) 6 Cal.App.3d 890, 895.) But this is not a case in which appellant failed to comply with the terms of her probation on a single occasion. Rather, the record shows that, although appellant’s father told appellant to comply with the terms and conditions of her probation, appellant violated her probation in the following instances: although ordered on May 30 to report to her probation officer on a bimonthly basis, she completely stopped reporting after August 5; she “was failed” from the Juvenile Court Work Program she was ordered to complete, completing just 33 of the 64 hours of service ordered; and in the six months following the initial granting of probation, she made no payments on the \$100 restitution fine she was ordered to pay. Moreover, appellant’s proffered excuse for not reporting to her probation officer, viz., that she lost the officer’s telephone number, does not explain why she could not, by taking such obvious steps as consulting a telephone directory, somehow make contact with the officer, and is not indicative of a serious intent to comply with the terms and conditions of probation. On this record, the court reasonably could conclude that appellant had failed on probation while in the custody of her father,

and that further efforts by appellant's father to bring about appellant's compliance with the terms and conditions of probation would not be successful.

The record also supports the court's finding that appellant's welfare requires that custody be taken from her father. On this point, we find significant, in addition to appellant's multiple failures to comply with conditions of probation, indications in the record that appellant's father had not been successful in providing a stable living environment for appellant, and that appellant had engaged in the occasional use of alcohol and marijuana while in her father's custody.

Appellant points to various factors which, she asserts, demonstrate the court abused its discretion in ordering her removed from the custody of her father. For example, she argues that the underlying offense was a "non-serious and non-violent petty theft" and was her "first trouble with the law," and she did not commit any new offenses following the grant of probation. But such factors, although militating in favor of allowing appellant to remain in the custody of her father, do not compel such a result. In *In re Reynaldo R.* (1978) 86 Cal.App.3d 250, 256, this court held that the juvenile court did not abuse its discretion in committing the minor to the California Youth Authority, stating, "[t]he minor's record, although justifying a less restrictive disposition, was sufficient for a finding of probable benefit to the minor by a Youth Authority commitment." Similarly, in the instant case, although the record contains evidence supporting a different result, substantial evidence supports the disposition. Therefore, the court did not abuse its discretion in ordering appellant removed from the custody of her parents.

### **DISPOSITION**

The orders appealed from are affirmed.